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August 21, 2015

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-15-18  
Contract Eligibility for Disaggregated 100 kW Solar Projects – Idaho  
Power Company's Reply Comments

Dear Ms. Jewell:

Enclosed for filing in the above matter please find an original and seven (7) copies of Idaho Power Company's Reply Comments.

Very truly yours,



Donovan E. Walker

DEW:csb  
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER	)	
COMPANY'S PETITION TO DETERMINE	)	CASE NO. IPC-E-15-18
PURPA CONTRACT ELIGIBILITY FOR	)	
TEN DISAGGREGATED 100 KW SOLAR	)	IDAHO POWER COMPANY'S
PROJECTS	)	REPLY COMMENTS
	)	

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Idaho Power Company ("Idaho Power" or "Company"), in response to the Notice of Petition and Notice of Modified Procedure issued in Order No. 33342 and in response to the Comments of the Idaho Public Utilities Commission ("Commission") Staff ("Staff"), Site Based Energy LLC ("Site Based Energy"), and the Idaho Irrigation Pumpers Association, Inc., filed on August 14, 2015, hereby respectfully submits the following Reply Comments to the Commission.

Idaho Power respectfully disagrees with Staff's recommendation to allow Site Based Energy's ten separate 100 kilowatt ("kW") projects to receive a 20-year contract term. Idaho Power requests that the Commission limit the maximum contract term for Site Based Energy's proposed ten 100 kW Public Utility Regulatory Policies Act of 1978 ("PURPA") solar projects to two years.

## **I. IDAHO POWER'S REQUESTED RELIEF**

Staff misconstrues the requested relief that the Company seeks with its Petition.

Staff's Comments state:

Specifically, the utility asks the Commission to issue an Order finding that Site Based Energy's ten 100 kilowatt (kW) projects are actually a single 1 megawatt (MW) project "disaggregated" into ten 100 kW projects. The issue of whether this is a single large project or ten smaller projects will determine which one of two avoided costs methodologies is used to calculate the rate Idaho Power must pay for power, as well as the appropriate length of the PURPA contract(s). Idaho Power requests that the Commission find that Site Based Energy's project is only eligible for a single contract with a term of five years, or whatever maximum contract term the Commission sets in Case No. IPC-E-15-01, for which an Order is pending at the time its Petition was filed in this case and when these comments were prepared.

Staff Comments, pp. 1-2.

Nowhere in the Company's Petition does it ask the Commission to find that Site Based Energy's proposed ten 100 kW projects be found to be one large project. In fact nowhere in the Company's Petition does it address any difference or objection to contracting with ten separate 100 kW projects at published avoided cost rates, other than objecting to the requested 20-year contract term. The Company's Petition is squarely directed at and seeks the specific relief of requiring the ten 100 kW projects to contract at the maximum contract term limitation determined appropriate by the Commission in Case No. IPC-E-15-01. In fact, the title of the Petition is "Petition to Determine Contract Term Eligibility for Disaggregated 100 kW Solar Projects." Petition, p. 1. The Petition states:

Idaho Power Company . . . hereby respectfully petitions the Idaho Public Utilities Commission ("Commission") for an order determining that the ten 100 kilowatt ("kW") PURPA solar projects, proposed by Site Based Energy as WRCE 1 through WRCE 10, be subject to the Commission's interim relief approving maximum contract terms of five years as directed in Order Nos. 33222 and 33253 and further, that such projects also be subject to the Commission's ultimate determination regarding maximum contract term in Case No. IPC-E-15-01, which is currently scheduled for technical hearing on June 29, 30, and July 1, 2015.

Petition, p. 1. Further, the Company's Request for Relief from the Petition states:

A proposed solar QF project over 100 kW is only eligible for a contract with a maximum contract term of five years. Site Based Energy's proposed ten 100 kW projects are specifically disaggregated into 100 kW increments using a common design scheme and nomenclature in an attempt to manipulate the Commission's rulings to inappropriately gain access to 20-year contracts. The practice of disaggregating projects in order to manipulate the Commission's rules has been rejected and disapproved by the Commission in the past. Idaho Power asks that the Commission direct its interim relief, maximum contract term of five years, as well as any determination as to the maximum contract term resulting from Case No. IPC-E-15-01, be applicable to the ten 100 kW projects identified as WRCE 1 through 10 proposed by Site Based Energy.

Petition, pp. 4-5.

Staff appears to agree that there is a problem with, and questions the validity of, Site Based Energy's requests for contracts and whether such requests satisfy the "intent of Commission orders."<sup>1</sup> Staff Comments, p. 7. Staff correctly identifies that

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<sup>1</sup> "While there is room for debate about whether it is necessary for a project to satisfy both the letter and the intent of commission orders, nonetheless, Staff believes this case presents questions that need to be addressed. SBE's project is just the first to be proposed consisting of multiple 100 kW pieces. Because solar can be developed in such small increments, Staff believes it is probable that additional similar proposals will follow as interest in solar grows and costs continue to decline. Staff believes that prior Commission orders are insufficient to properly address the emergence of co-located solar projects. Staff believes the Commission needs to further refine and develop more specific rules that can be more effectively applied to the myriad of solar project configurations that may be proposed in the future." Staff Comments, p. 7.

there is an unintended problem with the Commission's 100 kW published rate eligibility cap as a remedy for disaggregation when it comes to solar Qualifying Facility ("QF") projects.<sup>2</sup> Staff Comments, p. 6. It is clear that Staff recognizes Site Based Energy's proposed configuration as a manipulation of the Commission's rules to gain access to 20-year contracts because it recommends that the Commission hold any other additional solar projects proposed under the surrogate avoided resource methodology pending the Commission's decision in a new docket for the purpose of developing rules for managing co-located projects. Staff Comments, p. 9. However, despite this acknowledgment, Staff ultimately recommends that Site Based Energy's ten 100 kW projects be given 20-year contracts at published avoided cost rates "because the proposal does not appear to violate FERC rules nor technically violate prior Commission orders." Staff Comments, p. 11. Idaho Power submits that Staff correctly identified that there is a problem with PURPA solar projects being able to configure themselves into 100 kW increments in order to gain access to more favorable rates or contract terms—a problem that does not comport with the Commission's past prohibition of projects configuring themselves into smaller increments in order to manipulate eligibility under the Commission's rules. However, it does not follow that Site Based Energy be allowed to enter into 20-year contracts under this manipulation and harmful practice.

It is important to note, as the Company, the Idaho Irrigation Pumpers Association, and Staff do, the similarities with the Commission's past determinations prohibiting wind and solar projects from disaggregating into ten average megawatt

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<sup>2</sup> "In its comments filed in that case [Case No. GNR-E-11-03], the Commission Staff believed that a 100 kW cap would be small enough to prevent disaggregation of wind and solar projects. While this seems to have proven true for wind projects, it may not be true for solar projects. This is because the smallest practical increment for solar is about 0.3 kW, the approximate capacity of a single solar panel, and because typical solar projects consist of clusters of many 0.3 kW panels." Staff Comments, p. 6.

("aMW") increments in order to gain access to published rates and Site Based Energy's present manipulation of project configuration designed to get access to 20-year contracts. Staff's acknowledgment of the problem but subsequent recommendation to allow ten 20-year contracts to proceed is harmful to customers and unnecessary. In past cases involving primarily QF wind generation, the Commission was put in the difficult position of having to disapprove signed contracts because the contracts were for published rates with disaggregated projects at ten aMW, which ran contrary to the Commission's ruling reducing the published rate eligibility cap to 100 kW for wind and solar. This was after several hundred megawatts of disaggregated wind projects already had signed and approved, long-term, fixed rate, 20-year contracts obligating Idaho Power customers to those rates on a long-term basis. Here, the Commission has the opportunity to grant relief prior to the harm and consequent price risk being locked-in for customers for the next 20 years.

During the course of this case, the Commission released its final order on August 20, 2015, in Case No. IPC-E-15-01 regarding the maximum contract term. Order No. 33357. In that Order, the Commission granted Idaho Power's request to reduce the maximum contract term for PURPA QF projects that exceed the published rate eligibility cap from 20 years to two years. In so ordering, the Commission found:

Based upon our record, we find that 20-year contracts exacerbate overestimations to a point that avoided cost rates over the long-term period are unreasonable and inconsistent with the public interest. We find shorter contracts reasonable and consistent with federal and state law for multiple reasons.

. . .

We find that a change in contract length aligns with the intent of PURPA, is consistent with FERC regulations and

achieves an appropriate balance between the competing interests of protecting ratepayers and developing QF generation.

Order No. 33357, pp. 23, 25. The Commission also qualified this limitation, “We further find that on a case-by-case basis, there may be justification for IRP-based contracts in excess of two years.” *Id.*, p. 26. Just as the Commission acknowledges that there may be instances, on a case-by-case determination, where a longer-term contract may be appropriate, the Commission can similarly determine, on a case-by-case basis, whether there are instances where an otherwise qualified published rate QF project should be subject to the same two-year contract limitation as QF projects that exceed the published rate eligibility cap. This particular factual situation at issue in this case is precisely one of those instances where the Commission must step in to protect customers from the same long-term price risk and harm that it just recently determined to prevent in Order No. 33357. It would be untenable to immediately allow a group of ten 100 kW proposed solar projects to manipulate its configuration in such a way as to “technically” qualify for 20-year contracts and impose the long-term harm upon customers that the Commission has just announced is harmful and not in compliance with PURPA.

The Commission has authority, under its case-by-case implementation of PURPA for the state of Idaho, to determine whether it is just and reasonable to Idaho Power customers and in the public interest to allow a practice such as that proposed by Site Based Energy here—a practice that it has determined elsewhere to be improper and harmful to customers. It is not necessary to determine whether Site Base Energy’s proposed projects are really ten projects or a single project. It is clearly apparent from



the particular facts and circumstances of this particular case that Site Based Energy is purposefully configuring its project in such a way as to manipulate the very rules designed to protect customers, in order to avoid application of the Commission's contract term limitation for solar QFs. Staff's recommendation, which recognizes and acknowledges the inherent problem and ability of solar QFs to disaggregate, falls short of adequately protecting customers, by recommending that Site Based Energy's ten projects be allowed to contract for 20 years, thereby locking in harmful price risk for customers. The Commission should direct that Site Based Energy's ten 100 kW projects be subject to the Commission's two-year contract term limitation directed by Order No. 33357.

## **II. RULES FOR CO-LOCATION AND COMMUNITY SOLAR**

As stated above, Idaho Power does not believe that additional rules, nor additional proceedings, are necessary for the Commission to resolve the issue identified in this matter—whether Site Based Energy's ten 100 kW projects are eligible for 20-year contracts. The Commission should apply its two-year contract term limitation to Site Based Energy's ten projects. The Company is not opposed to Staff's recommendations that the Commission initiate proceedings to consider rules for community solar projects. However, Idaho Power does not believe it is necessary for the Commission to develop specific co-location rules and that the Commission can determine on a case-by-case basis whether any particular project configuration is designed to manipulate its rules to the detriment of customers, as Site Based Energy has in this instance. With regard to community solar projects, the Company agrees and supports the request for the Commission to address whether it makes sense to have a separate way, outside of



PURPA, to develop community solar projects while protecting customers. In its 2015 Integrated Resource Plan (“IRP”), recently filed with the Commission,<sup>3</sup> the Company expressed its desire to “explore the risks and opportunities of, and potential designs for, a community-based solar project by continuing to work with interested parties.” 2015 IRP, p. 8. The Company also stated, “Because there is no identified resource need in the near-term, a project of this nature would be pursued outside the traditional needs-based regulatory framework and would focus on meeting changing customer preferences with regard to where and how the energy they use is produced.” *Id.* The Commission recently stated in its final order on limiting contract terms to two-years:

In direct response to public concerns, we note that PURPA is not the only avenue to develop renewable resources. As Dr. Don Reading testified at our technical hearing, utilities have and will probably continue to develop non-PURPA renewable resources in the future through a variety of means. Tr. at 868-70. Indeed, as several witnesses pointed out in our hearing, the utilities have developed or purchased hundreds of MW of non-PURPA renewable[s] as part of their generation portfolio. Tr. at 931, 11, 177-78. Moreover, acquiring more renewables while maintaining low rates is consistent with the State’s 2012 Energy Plan.

Order No. 33357, p. 9 (footnote omitted). Consistent with the Commission’s recent statements from Case No. IPC-E-15-01, as well as the Company’s statements in its 2015 IRP, Idaho Power believes it is reasonable for the Commission to “consider whether specific rules are necessary or desirable for community solar projects” as recommended by Staff. Staff Comments, p. 11.

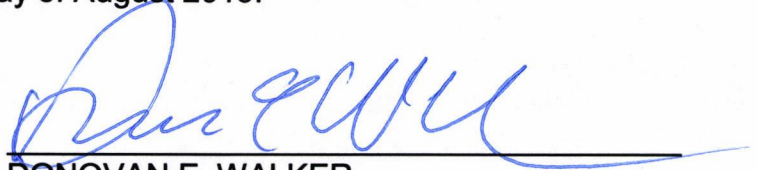
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<sup>3</sup> Case No. IPC-E-15-19.

### **III. CONCLUSION**

A proposed solar QF project over 100 kW is only eligible for a contract with a maximum contract term of two years. Site Based Energy's proposed ten 100 kW projects utilize a common building site, developer, construction, design scheme, and nomenclature, but are specifically configured into 100 kW ownership increments in a blatant attempt to manipulate the Commission's rulings to inappropriately gain access to 20-year contracts. The practice of disaggregating projects in order to manipulate the Commission's rules has been rejected and disapproved by the Commission. Idaho Power asks that the Commission direct that the maximum contract term of two years be applicable to the ten 100 kW projects identified as WRCE 1 through 10 proposed by Site Based Energy.

Respectfully submitted this 21<sup>st</sup> day of August 2015.



DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August 2015 I served a true and correct copy of IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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